SPEECH

OF

RICHARD H. BAYARD,

OF DELAWARE,

ON

MR. BENTON'S MOTION TO EXPUNGE FROM THE JOURNAL OF THE SENATE

The Resolution of March 28th, 1834.

DELIVERED IN THE SENATE OF THE UNITED STATES JANUARY 16, 1837.

WILMINGTON:

Printed by R. and J. B. Porter, No. 97, Market Street.

1837

SPEECH.

Mr. BAYARD said that, notwithstanding he had not before had an opportunity of expressing his opinion on the subject now under discussion, yet he should have been unwilling at this late hour to have trespassed on the time and attention of the Senate, had he not felt it to be a duty which he owed to himself and to his immediate constituents, to contend and protest against a measure which he believed to be a violation of the Constitution. I say, sir, constituents, for, in my theory of this Government, we are all the representatives of the People, though chosen after a different manner. Every infraction of the Constitution, however unimportant it may appear in its immediate consequences, tends to diminish the general confidence in the stability of our Government, and the general attachment to it; and as the People of the State I have the honor in part to represent are devotedly attached to that instrument, and feel that their political existence is incorporated with it, that in it they live, and move, and have their being as a political community, I say, sir, it is a duty which I owe to them to contend to the uttermost of my ability against whatever thus incidentally affects them. It is a duty, too, which I owe to myself, as I have a personal interest in whatever affects the *character* and *honor* of this body, of which I am an humble member.

I have no intention, Mr. President, to inquire into the motives which may lead gentlemen to the adoption of this resolution. The *motives* of every man are his individual property; and as his action here, in relation to this matter, is under the sanction of an oath, they involve a responsibility only to his conscience and his God. I cannot say, sir, that the act which is now required to be done is a sacrifice to the Moloch of party spirit. I cannot say that it is a homage to an idol resembling that which the Chinese pays to his household god when he burns before it a little piece of gilt paper as the humble offering of his piety and adoration. Nor can I say, sir, that it is intended to smooth the mane and calm the roar of the lion. All these views belong to the class of motives with which I have nothing to do. But, sir, I have something to say and something to do with the doctrines advanced and the acts done here, which become part of the common stock. If it *seems* from the *nature* of the act done, and from the *insufficiency* of the reasons given for it, to be an *act* of *homage* at the footstool of executive power, I have, then a personal interest in the matter which not only justifies my doing so, but makes it a matter of duty to express my opinions as well as to record my vote. And, sir, it becomes the more necessary and proper to express those opinions, since, if this principle of expunction be adopted, I have no security that the record of that vote may not be destroyed, if hereafter it should become expedient to give to the resolution the appearance of unanimous approbation.

What is it, sir, we are called upon to do? A man may do wrong unwittingly, and we must take care to have a clear and precise idea of the act to be done. In *words*, sir, we are called upon to *expunge* from the journal a certain resolution, but in fact and in truth to *falsify* a *record*. The same mind which might contemplate the one proposition with indifference, would regard the other with horror. To a mind *reckless* of consequences, which has no *future*, which looks only to the present, and views every act as an insulated event, having no

relation to what has preceded, and no influence on what is to follow, to *expunge* from a journal may seem a very harmless act. But, sir, even such a mind might be brought to revolt with disgust from the same measure when it imported the suppression of the truth, or the assertion of a falsehood. The approaches of crime are stealthy and mysterious; the assassin wears his mask; vice pays to virtue the homage of assuming her form; the knave puts on the cloak of religion; the demagogue becomes the friend of the People. It becomes, then, my purpose to show that to *expunge* from the *journal* is to *falsify* a *record*.

Let me now draw the attention of the Senate to the terms of the resolution. It professes to set forth the *act* to be done, and the *reasons* for doing it. And first, sir, as to the act itself. It is described in these terms:

"*Resolved*, That the said resolve be expunged from the journal, and for that purpose that the Secretary of the Senate, at such time as the Senate may appoint, shall bring the manuscript journal of the session of 1833-'4 in the Senate, and in the presence of the Senate draw black lines around the said resolve, and write across the face thereof, in strong letters, the following words: *Expunged by order of the Senate this* ——— day of ———, in the year of our Lord 1836."

Nothing can be more explicit in its terms. The act to be done is to expunge. The first member of the sentence conveys the whole idea, and if the resolution had stopped there, with the simple assertion that an expunction should take place, there cannot be a doubt that the Secretary would have been authorized to blot out or erase from the journal the objectionable passage. The Senator from Pennsylvania (Mr. BUCHANAN) has gone into a critical examination of the meaning of the term *expunge*, and has given us various instances of its use in a metaphorical sense, and concludes that, because the word may be used metaphorically, it is in this instance a harmless metaphor. In all uses, whether literal or metaphorical, it imports *destruction;* and the beauty and force of the metaphor in every instance depends on the *precise* meaning of its literal acceptation. The term *expunge* means literally *to wipe out*, which imports destruction; or, in other words, it imports that something which has an existence shall cease to exist. Whether the term is at any time used literally or metaphorically, will depend on the subject-matter to which it is applied. Thus, in some of the instances given by the Senator from Pennsylvania, as the one "to expunge our sins," no doubt the word is used metaphorically; but does not the whole force and value of the expression depend on its literal meaning, and import that those sins shall cease to have a moral existence as reasons for the Divine vengeance? And when used as applicable to a section of a bill, which is another instance given by the Senator, does it not mean that such section shall cease to have existence?

The Senator asks whether, if a resolution passed that a section of a bill shall be expunged, the Secretary would proceed to obliterate it? I answer that from the method of our proceedings it is not necessary for him to erase every word, because the purpose is effectually answered by drawing his black lines across it, or simply writing upon its face the word expunged, for in effect it becomes so, by ceasing to have any legal existence; and if such bill were ordered to be engrossed for a third reading, the section thus expunged would be omitted in the engrossment, as if it had never existed. But the authority conferred upon him by such a resolution is literally to erase every word of the section. Such, also, is the case when the word is used in relation to a part of the journal, and it becomes his duty to blot out or obliterate from its face the passage ordered to be expunged. But it is said that the present resolution does not contemplate an actual expunction or obliteration of the passage, but merely a typical one. And Senators seek to reconcile themselves to this measure by such a play upon

words. A typical expunction! To get rid of the sophistry at once, let me ask whether a journal is not the evidence of a fact, as, for instance, the passage of a particular resolution, and whether to expunge from the journal that resoltion is not to destroy the evidence of the fact that such a resolution had been adopted? If, then, you have the right to expunge, and do actually declare that a passage shall be expunged, does it not for all legal purposes suppress the evidence of the fact, no matter what the manner of expunction may be, whether by erasing, by blotting out, or by writing the word expunged over its face? Could the Secretary certify, after the adoption of the expunging resolution, that such a passage existed on the journal? If he were called upon to publish a new edition of the journal, would he have a right to insert the passage expunged? It is in vain that the assertion is made that the printed volumes would be evidence of the fact. The printed volumes are only *prima facie* evidence, and admitted for convenience, but could never stand against a sworn copy of the journal. There is, then, for all the purposes for which a journal is kept, namely, as evidence of a particular transaction, no difference between an actual and a typical expunction. That in the present instance no grave and immediate consequences affecting individual rights is to follow, does not alter the case. The principle asserted in the resolution is, that the right to expunge exists, the mode of doing it is of no consequence; and I will show presently, that the exercise of such a power is not only unconstitutional, but may be attended with the most important and direct influence on the personal rights of individuals. The natural import and the necessary legal effect of the phrase "expunged from the journal," is to destroy the evidence of the fact expunged whether it be used literally or metaphorically.

Having thus ascertained the meaning of the word expunge, and the effect of any mode of expunction, the question arises whether the Senate possess any such power over its journals. Has it the right to destroy the evidence of a particular transaction, for the journal is not only the highest evidence, but the only evidence of the fact? A journal is a *daily record* as contradistinguished from a temporary memorandum. But it is contended that though a record, it is not a permanent one, being of value only until it is published; after which, it becomes mere waste paper. Is this proposition true? For if it be, then so far as this particular case is concerned, there is an end of the question.—The language of the Constitution is "that each House shall keep a journal of its proceedings, and, from time to time, publish the same." Resort has been had to the meaning of the word keep, as importing preservation, to show that the Constitution contemplated a permanent, and not a temporary record. But I admit that the word *keep* does not necessarily imply *permanent preservation;* it may mean preservation for a temporary purpose. The word keep, like every other word in the language, must depend for its meaning on the manner in which it is used, on the subject-matter to which it is applied.—Words are but the signs of ideas, and it is one of the imperfections of language that it often expresses too much or too little, while felicity in its use consits in the choice of those terms which convey either the simple or complex idea with precision. A word, too, may stand for a whole sentence, for a class of ideas, as in the familiar use of this very term. Thus, to keep a horse may not merely mean that he is fed, and curried, and stabled, but that he is rode; as, where the conversation being about the personal habit of any one in relation to exercise, it should be remarked of him, he keeps a horse; the term imports both preservation and use. So in the phrase keep a cow; the use for which she is kept is implied, as if a house keeper were asked, "Do you buy your milk?" and should reply, "No, I keep a cow:" it imports not only that she is fed and

taken care of, but that she is milked, and her milk consumed by the family.— So, keep a *carriage* does not merely mean that a carriage is locked up in the house, but that it is used. Keep house, imports the burden of household duties; as keep tavern imports the duty of receiving and attending to guests.— There cannot be a doubt that the phrase "keep a journal," means to make and preserve one. But still the question arises as to the length of that preservation; and it is contended that the subsequent injunction to publish indicates at once the purpose and length of preservation. Is this true? The words are *keep and publish*, not keep in order to publish. But waiving all verbal criticism, let me remark that a constitution is merely a collection of principles; and in order to ascertain the force and meaning of any term, it is necessary to attend to the object of the provision, and the principle connected with it. What then, sir, are the purposes for which a journal is to be kept? I do not pretend to give them all, but some of them, as drawn from the Constitution itself; and it will then be seen whether such *purposes* are of a temporary or permanent character, and by consequence whether the journal is intended to be a permanent or temporary record. In the first place, it is intended to record the day on which a bill has been *presented* to the President for his approbation, and the day on which *Congress adjourned*, for on these two facts may depend the validity of a law. Thus, in the seventh section of the first article of the Constitution, it is provided:

"Every bill which shall have passed the House of Representatives and the Senate shall, before it become a law, be presented to the President of the United States; if he approve, he shall sign it; but if not, he shall return it, with his objections, to the House in which it originated, &c. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall become a law, in like manner as if he had signed it, unless the Congress, by their adjournment, prevent its return; in which case it shall not be a law."

Here is one permanent purpose as enduring as the law itself.

In the second place, it is intended to record the fact of membership in this body, the Senate being the judge, and settling the question of membership in cases of contested election, by the express provision of the fifth section of the first article of the Constitution. And this was done in the case of the venerable and distinguished Senator from Rhode Island (Mr. Robbins.) Has not he, and has not his State, a permanent interest in that decision, and in the evidence of that fact? Suppose, sir, it should become expedient at any time to expunge such a decision, what would become of the rights of the Senator from Rhode Island, if a competitor were to present himself here for his seat, with fresh credentials from his State?

In the third place, it is intended to record the presence of a quorum at the opening of each session of Congress, as well as to ascertain the fact that Congress did assemble on the constitutional day of its meeting. The journal always opens with a statement of the names of those who assembled; when it is once ascertained that a quorum is present, it is afterwards taken for granted that they perform their duty, and are always present, unless the contrary is made to appear. But if it so happened that no quorum was present, or that Congress had assembled before it had a legal right to do so, the laws passed under such circumstances would be merely void. This certainly is a matter of permanent importance.

In the fourth place, it is intended to record the action of this body on the *conduct* of its members, as in the instance of the punishment of any of them for disorderly behaviour. Suppose the case of the expulsion of a member, will not

the right of the State from which he comes, to send a successor depend on the fact of expulsion? And could you, by expunging the resolution of expulsion, restore him to his seat? And yet, if you destroy the evidence of the expulsion, is there any thing to invalidate his rights as established by his credentials when he first took his seat? Suppose he was elected for six years, and you expel him at the expiration of the second, how would it be possible to contest his right to a seat for the remaining four years?

In the fifth place, it is intended to ascertain the fact of your organization as a court of impeachment, and the judgment passed on the offender. The judgment may extend to a removal from office, and a disqualification to hold and enjoy any office of honor, trust, or profit, which in its nature is perpetual, and is excepted out of the pardoning power which is given to the President in all other cases.

In the sixth and last place to which I mean to advert, it is intended to record the votes of members on matters of moment, that they may be held to their responsibility for pernicious measures. And hence it is expressly provided in the fifth section of the first article, "that the yeas and nays of the 'members of either House on any question *shall*, at the desire of one-fifth of 'those present, be entered on the journal." Has not every individual a personal and permanent interest in the record for good or for evil? This last purpose has reference to the great principle on which republican government is founded—the responsibility of the representative to his constituents. From a consideration, then, of the purposes for which a journal is to be kept, it is apparent that it is intended to be a *permanent* and not a *temporary* record. None of those purposes would be effectually answered by the mere publication of the journal. They are matters of fact of which the journal, I mean the manuscript journal, is the highest evidence, and the only evidence where recourse is had to it, for any legal purpose. To expunge this record is to destroy the evidence of a fact; to falsify history, and verify the remark of the satirical Frenchman, that history is nothing but conventionable fables. Let me add, in relation to this matter, that the *suppressio veri* differs nothing in point of morality from the *allegatio falsi*, and that it would be as hard to maintain that you have a right to suppress the evidence of a fact which had occurred in your proceedings, as to maintain that you have the right to assert a fact upon your journal which never had any existence. But it has been contended by some that, because we have the custody of the journal, we have the right to do with it what we please. And does custody import the right of destruction? Will it be contended that the Secretary of State, who has the custody of your laws and treaties, and even of the Constitution itself, has, from that circumstance, the right to blot out sections from your laws, articles from your treaties, and paragraphs from your constitution; that he has the right to mutilate and destroy the records of the nation? In considering this right of expunction; the question is not whether the *substance* of the resolution proposed to be expunged is true, but whether such a *resolution* was *adopted;* that is the point of history. The existence on the journal of the resolution is no evidence of the truth of its allegation, but simply of its adoption; and the future historian, looking to the whole transactions of the time, would decide upon the truth or error of its allegation without giving to it any greater weight than is due to the mere expression of an opinion. Every Senator who voted for the original resolution has a personal interest in the record.

If it is true that to pass such a resolution was illegal and unconstitutional, and that flagrant wrong was done to the President of the United States, then his friends should not desire to have it expunged, but on the contrary, to preserve

it as a monument of reproach to those who participated in the measure. In this view of the subject, it should be preserved as a matter of satisfaction on the part of his friends, and of disgrace and shame on the part of his adversaries. And, on the other hand, if the right existed to pass the resolution, and its allegation was true in point of fact, those who sustained it by their vote have an interest in the evidence of their opinion, while those who thought otherwise have the benefit and satisfaction of being able to establish their dissent. In neither view of the case have the friends of the President any fair reason to desire that the evidence of the proceeding should be destroyed. The Senator from Missouri (Mr. Benton) may glory in the vote he gave on the occasion; the Senator from Kentucky (Mr. Clay) may do the same; neither has the right to deprive the other of the evidence of his course in relation to it. Those who voted for the resolution alone hazard any thing in preserving that evidence. If they were wrong, then it is for their shame; if they were right, it is the mere expression of an opinion from which others might rightfully and sincerely differ. If the allegation of the friends of the President is true, that the adoption of that resolution was a breach of the Constitution, and a most flagrant wrong to him, would it not be more natural that the Senator from Kentucky (Mr. Clay) should come here and ask us to expunge it, that he might conceal his participation in the matter? Is it not extraordinary that the Senator from Missouri, who takes great credit to himself for resisting the measure, should seek not only to conceal his own glory in opposing it, but the shame of his adversaries in supporting it? What is the purpose to be answered by expunging the resolution? The fact that such a resolution was adopted cannot now be concealed from the eye of history. The journal is only evidence of that fact, and not of the truth of the allegation contained in it. What valuable end, then is to be accomplished by the expunction? I fear, sir, that the future historian, looking over the whole ground of the controversy, will say, from the nature of the act, that it was a sacrifice, a peace offering at the altar of Executive power. In this view, we have all an interest in the record of the proceedings of this day, for good or for evil report.

But, Sir, I come now to consider the reasons which are offered for the adoption of this expunging resolution. They are set forth in the preamble, and I presume they are the best that can be offered. They have been well weighed and considered, and no doubt the ability of the Senator from Missouri has been taxed to the uttermost to present the case in the strongest possible point of view. His reasons are eight in number, and the first of them is in these words:

"And whereas the said resolve was irregularly, illegally and unconstitutionally adopted by the Senate in violation of the rights of defence which belong to every citizen, and in subversion of the fundamental principles of law and justice: because President Jackson was thereby adjudged, and pronounced to be guilty of an impeachable offence, and a stigma placed upon him as a violator of his oath of office and of the Laws and Constitution, which he was sworn to preserve, protect and defend, without going through the form of an impeachment, and without allowing to him the benefits of a trial, or means of defence."

Is this true in point of fact? The proceeding of which this reason professes to be descriptive was this: On the 28th day of March, 1834, the Senate in its usual course of business, adopted the following resolution:

"*Resolved*, That the President, in the late executive proceedings in relation to the revenue, has aussumed upon himself authority and power not conferred by the Constitution and Laws, but in derogation of both."

Is this first reason, then, a true description of the subject to which it refers?

If the Senate had organized itself into a Court of impeachment, called in the Chief Justice to preside, as required by the Constitution, and then proceeded to try the President without hearing him, and to pronounce judgment upon him, of removal from office, more could not have been said; no stronger language would be required to describe so wanton a violation of the constitutional law. Is there no difference between the cases? Can a stronger case of the perversion and abuse of language be put than this, which would represent a simple resolution of a deliberative assembly, expressing an opinion which has no legal effect whatever on the rights of the individual, as the judgment of a court which acts directly and immediately upon those rights? The proceeding referred to has neither the form nor substance of a judgment. Nor is the slightest guilt imputed in the opinion as expressed by the resolution. It states a fact, "that the President has assumed upon himself authority and power not conferred by the Constitution;" but is silent as to the motives and intention with which that fact was accompanied, the corrupt and wilful character of which alone, could give to the proceeding the attribute of guilt. But suppose, for a moment, that the Senate had, losing sight of the principles of law and justice, formed itself into a Court of Impeachment, and proceeded, without a hearing, to pass judgment on the individual: would that be a reason for expunging the record; for suppressing the evidence of so monstrous a proceeding? On the contrary, sir, it should stand as a monument of disgrace and dishonor to the men who participated in it. Its *legal* effect would be nothing; its *moral* influence would recoil on their own heads, and they should be held to that responsibility to Public Opinion, to secure which, it was provided that the yeas and nays should be entered on the journal. In this view of the subject, the hollowness and fallacy of the reason assigned is manifested by the fact that those who seek to suppress the evidence are not those who advocated, but those who opposed, the resolution. But, sir, it is the fate of a false position to embody the principles of its own destruction. If this reason be a true description of the resolution of 28th March, 1834, and sufficient for its expunction, is it not perceived that this very expunging resolution and its preamble is open to the same objection, as pronouncing judgment on those Senators who supported the former, as guilty of an impeachable offence and violators of their oaths of office, without the benefit of a trial? It should, then, in its turn, be expunged; and if I were called upon to draw up a preamble upon the strength of this precedent, I should use the same language, as being, as fair and legitimate a description of the present resolution and its preamble, as this reason is descriptive of the resolution of March 28, 1834. It is absolutely suicidal.

The second reason is as follows:

"And whereas the said resolve, in all its shapes and forms, was unfounded and erroneous in point of fact, and, therefore, unjust and unrighteous, as well as irregular and unconstitutional, *because* the said President Jackson, neither in the act of dismissing Mr. Duane, nor in the appointment of Mr. Taney, as specified in the first form of the resolve; nor in taking upon himself the removing of the deposites, as specified in the second form of the same resolve; nor in any act which was then or can now be specified under the vague and ambiguous terms of the general denunciation contained in the third and last form of the resolve, did do or commit any act in violation or in derogation of the laws and Constitution, or dangerous to the liberties of the People."

The substance of this reason is, that the resolution was erroneous in point of fact. Is that a reason for expunging it? It might form a very good reason for a counter-resolution. The subject is one on which a difference of opinion might fairly exist, and that difference was expressed at the time, both in debate and

on the journal; but surely that difference of opinion is no reason for destroying the evidence that such an opinion was expressed.

The third reason is, that

"The said resolve, as adopted, is uncertain and ambiguous, containing nothing but a loose and floating charge for derogating from the laws and Constitution, and assuming ungranted power and authority in the late executive proceedings in relation to the public revenue, without specifying," &c.

This reason conflicts with both the others, implying that, if the resolve were detailed and specific, it ought not to be expunged. If all these are reasons for the same act, they should not be antagonist to each other, but should harmoniously tend to the same conclusion. But want of detail can be no reason for suppressing the evidence that such a resolution was adopted.

The fourth reason is merely an amplification of the third.

The fifth reason is as follows:

"And whereas the Senate being the constitutional tribunal for the trial of the President, when charged by the House of Representatives with offences against the laws and Constitution, the adoption of the said resolve before any impeachment preferred by the House was a breach of the privileges of the House; a violation of the Constitution; a subversion of justice; a prejudication of a question which might legally come before the Senate; and a disqualification of that body to perform its constitutional duty with fairness and impartiality, if the President should thereafter be regularly impeached by the House of Representatives for the same offence."

The same answer may be given to this reason as is given to the first, that it is not a fair and true description of the case. It treats the resolution of 1834 as if it were a judgment of the Senate in its judicial capacity as a court of impeachment, when, in truth, it is nothing more than the expression of an opinion in its character of a deliberative assembly. It is no breach of the privileges of the House of Representatives, since it neither anticipates nor precludes an impeachment. It is no prejudication of any question which might come before the Senate as a court of impeachment, since such question must be one of guilt, and nothing of the kind is imputed in the resolution. But again: if all this were true, it would be no reason for expunging, or in other words, destroying the evidence of the fact that such a resolution was adopted.

But, sir, we come now to the sixth reason, which is perhaps the true motive, though not a justification for this extraordinary proceeding, and a gleam of light is thrown upon the subject, which gives it color and complexion. The substance of this reason is, that the President's protest was rejected, and not permitted to be entered upon the journal, while memorials and petitions against him were duly and honorably received. Here is another instance of that conflict with other reasons, which was remarked upon in adverting to the third.— It implies that, if the protest had been received, then the resolve should not be expunged. But with that confusion of ideas which seems to characterize the whole preample, it places the protest of the President on the same footing with petitions from the people. The President demanded that his protest should be spread upon the journal, which he had no right to do. But, supposing for a moment that he had, is the refusal a reason for expunging the resolution to which the protest had reference? The People have an undoubted right to express their opinions and wishes, in the form of petitions and memorials, but the President, as such, has no right to notice the proceedings of any other branch of the Government in the form of a protest. It is no part of the functions or privileges of Executive power to review and rebuke the proceedings of the legislative or judicial branches of the Government. The aspect which the whole subject assumes, in contemplating this reason, is that of retaliation. It

looks like offering an indignity to this body by way of compensating the slight of Executive power.

The seventh and eighth reasons may be classed together, and resolve themselves into the general allegation that the said resolve was inopportune, of evil example, and dangerous precedent. All of which, being a mere matter of opinion about which a fair difference might arise, could furnish no reason for expunging the resolve, however it might be urged as a reason for passing a counter resolution. We have thus, sir gone through them all, and do not find one which justifies the conclusion that the resolution should be expunged. And if they do not singly support that conclusion, they cannot do it collectively. A thousand bad reasons have no more force than one. We may say, then, of this preamble, what was said of Gratiano's reasoning: "Gratiano speaks an in-'finite deal of nothing, more than any man in all Venice; his reasons are as two 'grains of wheat hid in two bushels of chaff, you shall seek all day ere you find 'them; and when you have them they are not worth the search."

But it is said the Senate had no right to pass such a resolution; that it cannot be justified as the fair exercise of any one of its powers. Still it may be answered, it is a fact that such a resolution was adopted, and the objection involves a mere difference of opinion, which cannot be a reason for destroying the evidence of the fact. But as to the right itself, I think there can be no doubt of its existence, when the subject is fully understood. The Senate, under the Constitution, has various powers, legislative, judicial and executive. The error lies in attempting to discover and explain the right to pass such a resolution in the exercise of any of *these powers.*

The object of all these powers is the modification of some social or political right. But the Senate is a *deliberative body*, and, as such, must have opinions, and express them. It is the inherent right and property of every deliberative assembly to have and express opinions, which can only be done by resolution. A resolution of thanks cannot be traced to any one of these powers, neither can a resolution of condolence; and yet no one ever doubted the right to pass either the one or the other. If it were necessary to resort to the Constitution for any express or implied authority, it might be found in the seventh section of the fourth article, which, in its last paragraph, supposes that there are other resolutions than legislative acts, or such as require the concurrence of both houses. But the very institution of a deliberative assembly in the nature of things, supposes and involves the existence of opinions and the right of expressing them. The powers of such an assembly, or, in other words, the control which it may exercise over the social or political rights of others, is a very different matter, and depends on the provisions of the Constitution which gives it existence. But is it not somewhat remarkable that those who made the objection do not perceive that this very expunging resolution which they advocate, presupposes the right? If the Senate has no right to pass any resolution but such as can be traced to one those powers, what right has it to pass this expunging resolution?—Into such absurdities, sir, will men fall when they seek to sustain, by reasoning, a false position. The right, then, to pass such a resolution I take to be unquestionable, and the exercise of it may be, at times, highly expedient, as a check or caution to the wantonness or heedlessness of Executive power, and as a measure short of impeachment. But sir, what is impeachment? A farce, a nullity! It is, like the case of the electoral colleges, an abortion. There is little danger to be apprehended but from a popular President; and the very fact of his being such, under the party organization of this country, supposes the fact that he is sustained and supported by a majority of the body in whom the impeaching power resides. I might here, sir, conclude what I wished to say in

relation to the matter now depending before the Senate, having, as I think, established two propositions, which cover the whole ground: first, that the Senate, as a deliberative assembly, had the right to pass the resolution of March 28, 1834, and secondly, that, whether true or not in point of fact, we have no right to expunge it, because the *journal* is, by the Constitution a PERMANENT RECORD. I will further incidentally remark that, if the right of expunction exists, and is to be established by this precedent, then a subsequent Senate may expunge this expunging resolution; and so, in all time to come: these successive expunctions may serve to indicate the triumph or defeat of the respective political parties of the country. But an attempt has been made to sustain this measure by a resort to precedents. Sir, precedents are of no authority when opposed to a clear, ascertained, settled principle. They are resorted to in doubtful cases, and often to avoid the force of principle. It is easier, at all times, to follow precedents than to reason. But, sir, above all things, precedents drawn from a period of revolution such as that referred to by the Senator from Virginia (Mr. Rives) are of no weight in a time of profound tranquility, when security and leisure give opportunity for reflection. It may be very expedient, in a moment of unsettled government and of violence, to suppress the evidence of a particular proceeding: but one could scarcely rely upon such authority for a warrant to corrupt a constitutional record in moments of security and regular government. And yet such is the character of the Senator's domestic precedent. As to his English precedents, they are of no value on a question like this, which does not depend on general parliamentary practice, but on the express provisions of a written Constitution, which has directed the keeping of a journal, and contemplates that journal as a permanent record.

But I am warned by the lateness of the hour that it is time to take leave of the subject; however sir, before I take my seat, I cannot forbear to offer a few remarks on some of the opinions and sentiments expressed by the Senator from Virginia (Mr. Rives) and others. We have been told by that Senator that the Senate is an aristocratical feature of the Government; that it is the citadel of that aristocratic spirit which seeks to ride on the necks of the people. What purpose, sir, is this sentiment to answer? Is it to break down the Senate? To bring it into contempt and odium with the people? But, first sir, let us inquire into the fact. Aristocracy in America! Where are its elements, where its means and appliances? Here, sir, where the wheel of fortune is perpetually revolving; where the poor man of to day becomes the rich man of to morrow; and no one can tell, whatever his present actual property, that his grandson may not be compelled to earn his bread by the sweat of his brow; where political rights are equal; and the avenues to wealth and honor open to every man; where the laws and customs of the country guard no man's inheritance in a settled course of descent. but break up and distribute in various rivulets, that wealth which may have been dammed up in the course of temporary accumulation, I say, sir, here, and under such circumstances, to talk of aristocracy is an insult to the common sense of the community. I see, sir, a practical refutation of this sentiment in the persons of the distinguished men by whom I am surrounded. To what patronage were they indebted for the honorable distinction which they have attained? To what do they owe their elevation and the high consideration in which they are held by the whole country but to the unaided efforts of their own abilities? Why, sir, you find in the person of your Chief Magistrate another striking proof of its error. A poor boy, for so I believe the story runs, cuffed during the Revolutionary War by a British officer for not performing some menial office, wins his way to the highest honors of the Republic, and comes to preside over the destinies of a great People: "bids the Romans mark him, and write his speeches in their books." Sir, the term is

a mere catch-word, or to use the metaphor of the Senator from South Carolina, "a mere tinkling bell to bring together a rabble of ideas which overwhelm all reasoning."

One of the strongest objections I have had to the course of the present Administration has been its constant effort to array the different portions of society against each other, and its habit of appealing for support to the worst passions and prejudices of our nature. When I heard the distinguished Senator from Virginia (Mr. Rives) a few days since, in the debate on the Treasury circular, declare that he did not belong to that class of politicians who divided society norizontally, but rather perpendicularly, into classes who mutually sustained and supported each other, I thought I perceived the dawn of a better state of things, and I felt grateful to him, sir, for the sentiment; but alas! sir, I fear it was but a temporary impulse of sound feeling, that must subside before the policy of the party.

To test the soundness of this opinion, let us for a moment consider the nature of this Government. It is emphatically a Government as contradistinguished from a Confederacy, limited in its powers, though supreme within its sphere; the legislative powers being vested in a Congress, composed of the Senate and House of Representatives. The People, being the source of all power, elect, either immediately or mediately, their representatives; immediately in the instance of the House of Representatives, mediately in the instance of the Senate. We are all, sir, the representatives of the People, though chosen after a different manner. I claim, sir, to be not the immediate but the general representative of the State of Virginia, as I hold that Senator to be the general representative of Delaware; and I, for one, thank Virginia for having sent so able and distinguished a representative of our common interests. The more permanent character of the representation in this body is a check imposed by the People themselves on their own action. The whole system is one of checks and balances. The two houses of Congress are mutual checks on each other. The Senate may fairly be presumed to be the more grave and sedate body, from the general fact of possessing less of youth and its attributes, although, sir, to be sure, there are some veterans in the other House, as well as some youthful aspirants in this. The ancient Germans, sir, who carried among the nations whom they conquered their notions of civil polity, were in the habit of arguing every question twice, once at their carousals, probably drunk, and once sober, that there might be in their councils a due degree of vivacity and deliberation. The same idea may be supposed to be carried out in our institutions, though the requisite attributes may not be insured by the same means. In claiming, sir, for this body the attribute of deliberation, I do not mean to say that we are by contradistinction the *sober* body.

The constitution which has established this system of government was the peaceable and deliberate work of the People. It was not, sir, the result of accident, or of a struggle for political power between different orders of society. To find fault, then, with the Senate, is to impeach the wisdom and intelligence of the People themselves. It is they, who, in adopting the Federal Constitution, have said that the Senate shall be organized as we find it, have prescribed the mode of its election, and given to it the character of greater permanency. But, sir, I ask again, what is the meaning of this sentiment? Are we to be prepared for reducing the Government to a *unit*, as we have been told that the cabinet should be one? Is it intended to blot out the component parts of this system, and reduce the Government to the *simple* relation of the President and the People? In the message of 1832, the Supreme Court was assailed, and its authority as the interpreter of the Constitution denied; and now, sir, we are told by the Senator from Missouri, that the President has *corrected* and *repealed*

the decision of that court in relation to the constitutionality of the Bank of the United States, and that, in his opinion, all that remains to be done is to issue an *audita querella* to ascertain the fact, have it entered on the record, and the judgment reversed. Here is at once a new attribute of power, and a most extraordinary mode of proceeding. On the other hand, we are told by the Senator from Virginia that the Senate is the citadel of that aristocratic spirit which seeks to ride on the necks of the People. If the Senator merely means that this language is descriptive of himself and his friends, be it so. I cannot quarrel with what he may deem just and proper, as to them, though I should have been backward myself in so characterizing them; but, sir, I utterly deny its justice and propriety as applicable to myself, or those with whom I have the honor and the happiness to act. In relation to this Government, I and my immediate constituents, and I believe a great majority of the American People, are conservatives. We go for the Government as it is. We wish to preserve the *system* of *Federal* and *State* Governments as it was established by the wisdom of our ancestors "We ask no change, and least of all, such change as they would bring us." In this system we live, and move, and have our being; and as we were the first to adopt the Constitution, we shall be the last to abandon it. We have heard much about the *policy* of the Executive, and have even been advised to look to that source for the initiative of certain measures. To my mind, all this is apiece with that exaggerated and false conception of Executive power and consequence, which has characterized the present Chief Magistrate and his advisers. The executive power which represents the common force of society is, in every just theory, and in the nature of things, inferior to the legislative power, which is the representative of the common intelligence and the common will, and that too, precisely in the degree in which brute force is inferior to reason. It is the business of the President to execute the laws, not to make them. The policy of the Executive! Who charged the President with the care of the general welfare? What business has he with any policy distinct from the policy of the law? The prosperity of a great and civilized People depends on the *laws*, and not on the *will* of the Executive. Sir, I regret to hear such opinions expressed. I trust in God they will not prevail in this country; for, to my mind, they are in direct hostility with that tone of manly and independent feeling which should characterize a nation of freemen.

In opening the subject of this expunging resolution, the Senator from Missouri, (Mr. Benton) has seen fit to entertain us with a magnificent eulogy on the merits of the President. This, no doubt, was a very fit introduction to the measure which is proposed, and may perhaps serve to indicate its ultimate aim and purpose. He has been described at one time as teaching the saucy Britons a lesson of humility from behind the cotton bags of New Orleans, and at another rebuking with the thunder of American cannon the savages of the Pacific Ocean, "bestriding the narrow world like a Colossus." Not content with this plenitude of military fame, he has been endued with all civic virtues and superhuman sagacity. While listening to this strain of adulation, every sober-minded individual must have involuntarily exclaimed with Cassius,

> "Now in the names of all the gods at once,
> Upon what meat doth this our Cæsar feed,
> That he has grown so great?"

Sir, I am not disposed to deny his real merits, or to withhold my gratitude for his real services. He has, sir, rendered good service to his country, and well has that country repaid him for it. But that service was in a military, not in a civil capacity.

Much has, as usual, been said about the People, and the People's friends, and

an impression is attempted to be given that those who support this Administration are alone the friends of the People. Who are they that thus arrogantly talk about the People as if they belonged to some superior order? The People's friends, indeed! The People, sir, stand in need of no friends; they are the sovereigns, it is they who dispense their smiles and their favors; and it would be much more becoming and seemly to speak of the People as being one's friend than of oneself as being the friend of the People. There is, to be sure, one point of view in which the supporters of this administration, I mean those in office, may be considered the friends of the People. It is the same in which the Licentiate, in Gil Blas, is termed and considered himself the friend of the poor, and who proved his friendship by consuming their revenues.

The aid of public opinion has been invoked in relation to this measure, and we are told by the Senator from Missouri that the People have rendered their verdict, and he demands judgment and execution. When and how, sir, was the issue made up? The resolution of March, 1834, was adopted after the last Presidential election; but this notion of a verdict is gathered from the fact of the continued ascendency of the party and the resolves of some State Legislatures. Can any thing be more preposterous than the assumption, that a majority of the People, liking the man, in yielding to him their support, are to be understood as approving of every thing that he says and does, and disapproving of every thing that is said or done against him? As well might it be contended, on the same ground, that because General Jackson smokes a pipe, the verdict of the People has established that it is right and proper to use tobacco, and that the legitimate mode of doing so, is by smoking it in an earthen pipe.

But all this, sir, is apart from the main question. We are called upon to expunge a resolution from our journal, to suppress the evidence of a fact, to falsify a record! If the right to do so were a matter of doubt merely, it would be the part of a prudent and conscientious man to pause. Let not, I pray, sir, the excitement of party spirit hurry this body to an act which is a clear infraction of the Constitution; be satisfied with a counter-resolution, expressing in as strong terms as you please your approbation of the President's conduct, and your repugnance to the resolution of the 28th of March, 1834, but do not let us inflict another wound upon the great charter of our Union. Rely upon it, sir, that if the frenzy of party spirit, or any other motive, shall lead you to do this deed, you will find yourselves in the condition of a homicide, who having exhausted his malice in a deed of violence, recoils with horror and remorse from the victim of his passion.